

## HUMAN SERVICES BOARD

# INTRODUCTION

## DISCUSSION

Community Access Program services are administered by the Department through an Equity Committee that evaluates

individual requests for services according to the needs of the individual and available funding. At the outset, it should be noted that the petitioners do not disagree with the Department's representation that the program is woefully underfunded. The petitioners also do not disagree that DAIL makes funds available to individual participants in the program through a validly promulgated System of Care Plan.

In the Spring of 2007, when their son was about to graduate high school and would no longer be eligible for special education services, the petitioners requested additional funding and services from DAIL under the Community Access Program. DAIL denied the petitioners' request based on its "funding priorities" under its System of Care Plan. DAIL maintains that it is presently providing funding for the petitioners under this program for respite care, and that the additional services and reimbursement requests by the petitioners do not meet current criteria for funding priority.

The items requested by the petitioners are a swimming pass, reimbursement for the petitioners and their respite providers for their use of personal vehicles in transporting their son, an increase in the rate of pay to their respite providers, reimbursement to the petitioners for fees for the

management of their son's respite care, and summer camp tuition. The petitioners do not allege (and have certainly produced no evidence) that their additional funding requests are necessary to prevent their son from being institutionalized. Thus, the sole issue in the matter is whether the Department has followed its guidelines in determining whether the petitioners meet current funding priorities for the particular services they have requested. Although the parents (who represent themselves in this matter<sup>1</sup>) do not specifically allege otherwise, an examination of the pertinent statutes and regulations appears to fully support DAIL's position in this matter.

Under 18 V.S.A. § 8723, DAIL's responsibilities to administer programs for the benefit of developmentally disabled children and adults are to be "within the limits of available resources". The statutes specifically charge DAIL with the duty to create and administer a "system of care plan". That statute provides: "The commissioner shall determine the priorities of the plan based on funds available to the department." § 8725(b).

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<sup>1</sup> From the outset (an initial status conference was held on July 24, 2007) the hearing officer strongly advised the parents to contact Vermont Legal Aid's Developmental Disability Project to obtain legal representation. The matter was continued several months, mostly at the petitioners'

In another recently-decided case (Fair hearing No. 20,480) the Board noted that in accord with the above statute DAIL has developed and promulgated a "three-year plan, FY 2005-2007" as part of its overall *Vermont State System of Care Plan for Developmental Services*. That plan includes an "FY 2007 update", effective July 1, 2007. The update includes specific "funding priorities". In this case, DAIL has determined that the petitioners' son meets the criteria for "respite and items through Flexible Family Funding that will help the (family) support the person at home". It appears that in December 2006 DAIL approved the petitioners for several hours a week of respite care, the amount of which is not in dispute in this matter. DAIL maintains that the petitioners' subsequent requests for additional funding (*supra*) are not covered under the System of Care Plan.

As noted above the petitioners do not specifically allege that the System of Care Plan includes any of their requested items in its list of funding priorities. They also have not alleged or shown that their ability to care for their son at home is jeopardized if they do not receive any or all of the requested items. To be sure, there is nothing

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request, in which time the petitioners have not obtained legal representation.

unreasonable in the petitioners' requests. Unfortunately, however, DAIL is empowered and entrusted to make difficult decisions in light of an insufficiently-funded program. In the absence of any evidence or legal argument that DAIL has abused its discretion in this regard, the Board is bound by law to affirm DAIL's decision in this matter. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

ORDER

The Department's decision is affirmed.

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